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Attorneys for Defendant The University of
Phoenix, Inc.

UNITED STATES DISTRICT COURT – SOUTHERN DISTRICT OF
CALIFORNIA

CHAD MCKINNEY, an individual,
Plaintiff,

v.

APOLLO GROUP, INC.,
UNIVERSITY OF PHOENIX, a
Corporation, MECHELLE
BONILLA, an Enrollment Manager
at UNIVERSITY OF PHOENIX,
KYAN FLYNN, Director of
Enrollment at UNIVERSITY OF
PHOENIX, APRIL ALCORN, an
Employees Relations Consultant at
UNIVERSITY OF PHOENIX,
CARLYN LINDSTEN, Associate
Director of Enrollment at
UNIVERSITY OF PHOENIX

Defendants

CASE NO. 07-CV-2373 WQH CAB

**NOTICE OF MOTION AND
MOTION TO SET ASIDE ENTRY
OF DEFAULT AGAINST THE
UNIVERSITY OF PHOENIX, INC.**

[FRCP 55(c)]

**NO ORAL ARGUMENT, UNLESS
REQUESTED BY THE COURT**

Date: May 12, 2008
Time: 11:00 a.m.
Courtroom: 4
Judge: Hon. William Q. Hayes

DATE OF FILING: December 19, 2007

TO PLAINTIFF AND HIS ATTORNEY(S) OF RECORD:

PLEASE TAKE NOTICE that on May 12, 2008 at 11:00 a.m., or as soon
thereafter as counsel may be heard by the above entitled Court, located at 940 Front
Street, San Diego, California 92101, Courtroom 4, defendant The University of
Phoenix, Inc. (“UOP”) will and hereby does move the Court pursuant to Rule 55(c)

1 of the Federal Rules of Civil Procedure (“FRCP”) to set aside the Court Clerk’s
 2 entry of default regarding UOP entered on March 20, 2008 (“Default”).

3 This action is brought on the following grounds: (1) The Default is void
 4 since UOP never received notice of the action before the answer was due; (2) The
 5 Court lacks jurisdiction over UOP since UOP was never properly served and
 6 therefore could not respond before the answer was due; (3) UOP was never
 7 properly added to plaintiff’s complaint; (4) plaintiff did not plead specific damages
 8 and cannot be awarded punitive damages; and/or (5) UOP reasonably believed, but
 9 was mistaken, that it had not been given actual notice or was properly served so that
 10 it should be relieved from the Default.

11 This motion is based on this notice of motion and motion, the memorandum
 12 of points and authorities, the declarations of Nathan W. Hicks, Ellen Bowens and
 13 Matthew Mitchell filed herewith, and supporting exhibits thereto, the Court’s files
 14 in this matter, all supporting documents, evidence and oral argument before this
 15 Court at the time of the hearing, and any other matter properly before the Court.

16 This motion is made following a reasonable and good-faith attempt to
 17 conference with plaintiff.

18 Date: March 31, 2008

SNELL & WILMER L.L.P.

20 By: s/Nathan Hicks

21 Christy Joseph

22 Nathan W. Hicks

23 Defendant The University of
 24 Phoenix, Inc.

PROOF OF SERVICE

**McKinney v. Apollo Group, Inc., et al.
USDC, Southern – Case No. 07-CV-2373**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-7689.

On April 1, 2008, I served, in the manner indicated below, the foregoing document described as

**NOTICE OF MOTION AND MOTION TO SET ASIDE ENTRY OF DEFAULT
AGAINST THE UNIVERSITY OF PHOENIX, INC.**

on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

I am employed in the office of a member of the bar of this court at whose direction the service was made.

Please See Attached Service List

- ☐ BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Costa Mesa, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the service herein attested to (C.C.P. § 1013(a)).
- ☐ BY FACSIMILE: (C.C.P. § 1013(e)(f)) and by e-mail
- ☒ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).
- ☐ BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand to the offices of the addressees. (C.C.P. § 1011(a)(b)).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 1, 2008, at Costa Mesa, California.


Anh Dufour

SERVICE LIST**McKinney v. Apollo Group, Inc., et al.
USDC, Southern – Case No. 07-CV-2373**

Chad McKinney Pro Se 6266 Madeline Street, Apt. #61 San Diego, CA 92115 (619) 634-3566	Plaintiff, Pro Se
United States District Court Attention: Hon. Judge William Q. Hayes Courtroom 4 940 Front Street, Room 4290 San Diego, CA 92101-8900 (619) 557-5600	Courtesy Copy

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